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Summary

Based upon its review of the comments submitted in this proceeding, BellSouth urges the Commission to adopt rules pursuant to SHVIA consistent with the following points made and further supported in these reply comments.

- The Commission should adopt local station carriage rules that require stations to unequivocally and unconditionally notify the DTH provider in writing of their must-carry election.
- Unlike cable, the default status election for DTH is retransmission consent.
- To maintain competitive parity, the Commission should require stations to elect must-carry status on all DTH systems serving a DMA once they elect must-carry status on one DTH system serving the same DMA, and to similarly require a station to follow consistent carriage status as between cable and DTH in the same market.
- No fixed time periods or deadlines should be adopted by the Commission as to the commencement of carriage of stations following election of must-carry status.
- Likewise, DTH providers should have the discretion to commence carriage of local stations as arrangements are completed with each, rather than being required to initiate carriage of all at once.
- In no circumstances should the completion of carriage arrangements be required before a television station has been fully licensed by the Commission.
- The DTH provider's entry notice should not have to include channel positioning and package pricing information for local-into-local service, or the DTH provider's "plans to carry."
- There should be a common election cycle for cable and satellite carriage in the interests of competitive parity and consumer convenience.
- The Commission must reject the suggestions that it conform the satellite market definition to the cable market definition.
- A station's right to carriage must be predicated on its delivery of a good quality signal to the collection point (whether in or out of market) designated by the DTH provider. The station made responsible for incurring all costs and undertaking all steps necessary to deliver a good quality signal. The DTH provider should be responsible only for cooperating in conducting tests of signal quality at the receive point. The Commission should reject NAB's request that the Commission interject itself automatically into this process by requiring an adjudicated determination of inadequate signal quality before a DTH provider can deny carriage.

- Spectrum constraints and relevant technical considerations require strict application of substantial duplication and NCE carriage limitations for DTH. Network Affiliates' suggestion that the Commission require Grade B overlap for substantial duplication misses the mark. Substantial duplication of programming content is the issue, not overlapping signals.
- The Commission should not require DTH providers to carry all NCE stations carried by cable systems in the same market. Rather, a DTH system should be allowed to limit its total NCE carriage throughout its footprint to 2% of the number of its activated channels.
- The Commission is without power to require all stations to appear on channel numbers that are in the order in which the stations appear to the over-the-air receiver.
- The Commission cannot require DTH providers to carry local-into-local stations on a basic service tier.
- Certain of NAB's list of "discriminatory" practices in signal carriage (extra "mouse clicks" to access stations, "special equipment" for viewing stations) do not violate SHVIA if all stations in a DMA are treated equally, and a ban would be unnecessary and would serve to limit technological innovation. Similarly, requests for affirmative requirements, such as display of network affiliation and importation of OVS nondiscrimination rules, are unfounded and inconsistent with Congressional intent.
- Mandating VBI carriage beyond closed captioning is premature and should be assessed on a case-by-case basis.
- TASO tests to measure signal degradation are inappropriate for digital satellite technology, as are other existing measurements.
- The Commission must decide the dual digital/analog signal carriage issue for DTH in this proceeding rather than leaving it open.
- To avoid unintended, and disproportionately adverse consequences, a DTH provider should be given notice of actions inconsistent with the SHVIA regulations, and an opportunity to correct the inconsistency before the provider is deemed in violation of a SHVIA regulation.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Implementation of the Satellite Home)	CS Docket No. 00-96
Viewer Improvement Act of 1999 ("SHVIA"))	
)	
Broadcast Signal Carriage Issues)	
To: The Commission		

**REPLY COMMENTS
OF BELL SOUTH CORPORATION AND
BELL SOUTH ENTERTAINMENT, INC.**

BellSouth Corporation and its subsidiary BellSouth Entertainment, Inc. (collectively, "BellSouth") hereby submit their reply comments in response to the Notice of Proposed Rulemaking (the "NPRM") in the above-captioned proceeding.^{1/}

I. INTRODUCTION

BellSouth's Comments in response to the NPRM provide the Commission with a cohesive regulatory framework for implementing Section 338 of the Communications Act of 1934, as amended (the "Communications Act"). In its comments, BellSouth urges the FCC to look, in part, to the precedent the Commission has established in rules and case law in the cable context. But it also asks the Commission to be mindful that there are significant technological differences between cable and satellite, as well as significant differences in the cable and satellite

^{1/} *In re Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Notice of Proposed Rule Making*, FCC No. 00-195, CS Docket No. 00-96 (rel. June 9, 2000).

must-carry / compulsory license regimes. It is because of those differences that Congress directed that the Commission develop rules which, where appropriate, are “comparable” to the cable rules but not identical. In these reply comments, BellSouth analyzes the comments filed in this proceeding against this backdrop.

II. REPLY COMMENTS

A. Local Signal Carriage Procedures

(1) Form of Station’s Carriage Request.

National Association of Broadcasters (“NAB”) and Association of Local Television Stations, Inc. (“ALTV”) urge that a station’s form of carriage request need not contain magic words; that it should be interpreted simply and plainly.^{2/} BellSouth does not disagree with this recommendation. Indeed, BellSouth believes that a simple regulatory regime for SHVIA implementation generally is in the public interest. But, BellSouth also believes that a carriage request that is conditional in any way must be considered a retransmission consent election. With this one caveat, BellSouth supports ALTV’s and NAB’s comments on the form of the carriage request.

(2) Default Election.

The direct-to-home satellite service (“DTH”) default election for stations that make no election cannot be must-carry, as suggested by the ABC, CBS, FOX, and NBC Television Network Affiliates (“Network Affiliates”).^{3/} Although the default election for cable is must-

^{2/} NAB Comments, at 3; ALTV Comments at 37-38.

^{3/} Network Affiliates Comments, at 4. Rule 76.64(f)(3) states that a television station will be deemed to have elected must-carry status for an election cycle if the station fails to make an election by the applicable deadline for the election.

carry, the Communications Act requires the opposite result for DTH in the event that a station fails to inform a DTH provider of the station's election of status. This conclusion is required by the fact that Section 338(a) states that a station may only have must-carry status "upon request." Absent that request, the station must be deemed to have maintained its retransmission consent rights.

As noted in BellSouth's comments, however, there are circumstances in which a local station should be deemed to have made a particular election. Thus, if a station elects must-carry status for one DTH provider, the station should be deemed to have elected the same status with respect to all other DTH providers providing local-into-local service in the same Designated Market Area ("DMA").^{4/} BellSouth favors extending this approach so that a station's status election for cable and DTH carriage in a DMA generally are the same. Accordingly, a station that requests must-carry for cable carriage would be deemed to have requested the same for DTH carriage, and visa-versa. In the event a station elects different carriage status for different cable systems in the same DMA, then the default election (retransmission consent) would apply to DTH providers. As explained in BellSouth's comments, this requirement -- which already applies in the event of competing cable systems -- would serve Congress's overarching intent in SHVIA to promote competitive parity between cable and DTH.^{5/}

(3) *Timing and Contents of DTH Provider's Market Entry Notice to Stations.*

ALTV proposes the following notice and carriage preparation periods: a six-month period beginning July 1, 2001 for the first must-carry election cycle commencing January 1,

^{4/} BellSouth Comments, at 10-11.

^{5/} S. Rep. No. 42, 106th Cong., 1st Sess., at 10 (1999) ("promotion of competition in the marketplace for delivery of multichannel video programming is an effective policy to reduce costs to consumers.").

2002; a ninety-day period prior to the mid-cycle start of new local-into-local service in a DMA; and a period of ninety days prior to the operation of a new television station for carriage of the new television station by a DTH provider who is already providing local-into-local service in that new station's DMA.^{6/}

BellSouth generally does not oppose the length of the timeframes proposed by ALTV for notice from either the station or the DTH provider with respect to signal carriage and negotiation of the details of that carriage. In the absence of any statement to the contrary, BellSouth interprets those timeframes as minimum notice periods, and not a requirement to launch service in a DMA. Rather, as expressed in BellSouth's comments,^{7/} the DTH provider should control when a notice period is triggered and whether, as a result of the responses to a notice, it makes sense for the DTH provider to commit transmission capacity to offer local-into-local service in a particular DMA. Where BellSouth and ALTV part company is in when the notice period should begin for new stations and in whether arrangements for the carriage of all must-carry signals in a DMA must be concluded prior to the time the DTH provider carries any must-carry signals to the DMA.

(a) Time for Commencing the Notice and Carriage Arrangement Process for a New Station.

ALTV suggests that carriage of a new station by an existing local-into-local DTH provider should commence by the time the new station begins operations in the DMA under program test authority, i.e., before the station is licensed.

BellSouth disagrees with this suggestion. BellSouth believes that a more logical approach would require the notice and signal carriage preparation process for new stations

^{6/} ALTV Comments, at 38-42.

^{7/} BellSouth Comments, at 7-8.

seeking carriage on existing local-into-local platforms to commence after the new station is built and licensed. The carriage obligations of Section 338(a) contemplate that a station must be a “television broadcast station,” meaning a station operating under a license,^{8/} before it can make a request for carriage triggering the process of arranging for such carriage. Further, beginning the carriage of the new station a reasonable time after the station commences service is necessary to implement ALTV’s related suggestion that the DTH provider must tell the new station, prior to carriage, if the station does not provide a good quality signal at the receive point, and must provide the station with measurements of the station’s signal demonstrating that fact.^{9/} It is not possible to measure the signal of an unbuilt station. Further, it makes little sense to force a DTH provider to immerse itself in the complicated process of preparing to carry a station that might not be built. Starting the carriage of a new station ninety days after the station begins operations will not cause any material harm to the station, and will encourage the station’s cooperation to complete the carriage preparation process reasonably promptly.

(b) Not All Carriage Arrangements Need Be Concluded Prior to Carrying Stations for which the Carriage Arrangement Process is Complete.

ALTV’s request to impose deadlines for concluding carriage arrangements and commencing carriage does not recognize that adherence to those deadlines may not be possible due to inadvertent error, circumstances outside of the control of the station or the DTH provider, or a failure of the station to cooperate in making those arrangements (particularly delivering a

^{8/} The must-carry rights accorded under Section 338(a) can only be triggered by a “request” of a “television broadcast station.” Section 338(h)(7) defines “television broadcast station” by reference to Section 325(b)(7) as a “licensed” station. A broadcast station is not licensed until after it is built. Prior to that time, all the broadcaster holds is a permit authorizing the broadcaster to build the station.

^{9/} ALTV Comments, at 42.

good quality signal to the signal collection point).^{10/} In those circumstances, the parties should continue to work toward the conclusion of necessary carriage arrangements,^{11/} and the Commission should reject any requirement that could result in delaying the consumer benefits that will flow from the initiation of local-into-local service in the DMA with other stations for which the carriage arrangements are concluded. Section 338(a) gives DTH providers a compulsory license subject to the requirement that, *after* that license is first used in a DMA, the DTH provider must carry the signal of any other station in the DMA desiring must-carry rights “upon request.”

The words “upon request” certainly cannot be understood as “immediately” upon request, as that would be impossible given the need to make arrangements to receive the signal at the local receive facility, to test the signal quality and to make other necessary technical arrangements. Nor can the words “upon request” be understood to require a wooden timeframe by which carriage must commence after the request. Congress was well aware that carriage arrangements may involve complicated and time-consuming technical issues, as well as the cooperation of the parties making the carriage arrangements.

Because of the need for cooperation and the technical differences among stations in their ability to deliver a good quality signal, the carriage arrangement process for any one station will be a unique process that does not lend itself to a one-size-fits-all rule that incorporates an arbitrary timeframe. Thus, BellSouth believes that Congress intended that there can be no failure to carry a station “upon request” until a reasonable period of time has elapsed taking into account the circumstances of each case necessary to arrange the carriage.

^{10/} BellSouth Comments, at 9-10.

^{11/} BellSouth Comments, at 10.

Even then, a DTH provider should not be found to have failed to carry a station “upon request” until (1) the Commission finds that carriage has not started solely because of the DTH provider’s lack of attention to the carriage plans that the carriage has not started, (2) the Commission orders the DTH provider to conclude the arrangements within an additional period of time, and (3) the DTH provider misses the deadline for compliance imposed in the Commission’s order. Such a process is essential to implementing local-into-local carriage because determining who is at fault when cooperative arrangements do not mature is often difficult, and because the penalty for violating any regulation of the Commission under SHVIA is the draconian loss of the compulsory license which may result in the requirement to cease local-into-local carriage.^{12/}

(c) *Content of Carriage Notices.*

BellSouth generally does not disagree with ALTV’s suggestion of the contents of carriage notices. BellSouth, however, does disagree with ALTV’s suggestion that the DTH provider’s entry notice should include “[c]hannel positioning and package and pricing information for local-into-local service....”^{13/} Section 338(d) makes clear that such information on channel positioning and packaging is irrelevant for must-carry purposes. All that is required is that local-into-local signals appear on sequential channel numbers. As explained below in Section E(2) of these reply comments, pricing information on the package containing such signals also is irrelevant to the must-carry regime. Indeed, ALTV acknowledges that none of these three variables should be relevant to DTH must-carry and that the DTH provider should be free to select these variables as long as there is contiguous channel number carriage within the

^{12/} ALTV Comments, at 47 n.98; 17 U.S.C. § 122(d). This point is discussed further in Section II(I), *infra*.

^{13/} ALTV Comments, at 40.

same service package.^{14/} Accordingly, the Commission should not require that the DTH provider's market entry notice contain this information.

Finally, ALTV suggests that carriage notices should inform stations of the DTH provider's "plans to carry" in the DMA.^{15/} BellSouth disagrees with ALTV. To the extent such information involves the identity of stations that will be carried, the DTH provider may not yet have such information since one purpose of such notices is to poll stations in a DMA on whether they will elect must-carry status. Moreover, this information is not required by SHVIA, could involve the disclosure of confidential information and is irrelevant to any rights accorded to a station under SHVIA. Thus, the Commission should not mandate DTH providers to supply this information. In any event, a requirement to insert "plans to carry" in carriage notices is a vague standard that will invite litigation over the adequacy of carriage notices and needless delays in the initiation of carriage.

(4) *Must-Carry Election Cycle.*

Network Affiliates recommends the use of a three-year cycle for DTH must-carry elections, but suggests that the cycle begin and end in different years than the election cycle for cable.^{16/} BellSouth favors a common election cycle for cable and DTH.

BellSouth believes that it would further competitive parity between multichannel video programming distributors ("MVPDs") by encouraging stations to treat DTH providers and cable systems alike in the election of must-carry status.^{17/} That goal will be much more difficult to

^{14/} ALTV Comments, at 10-19.

^{15/} ALTV Comments, at 40-42.

^{16/} Network Affiliates Comments, at 4-5.

^{17/} *Supra*, at Section II.A.(2).

attain if cable and DTH have different must-carry election cycles. Network Affiliates suggests that the staggered cycle approach serves the public interest because it would spread the administrative burdens of election over a longer time period. But, BellSouth believes that avoiding consumer confusion^{18/} and promoting a level playing field for MVPD competition are overarching public interest goals of far greater importance than speculative administrative convenience. Accordingly, BellSouth urges the Commission to adopt BellSouth's suggestion for a common election cycle.

B. *Market Definitions.*

NAB and other commenters ask the Commission to conform the satellite market definition to that for cable.^{19/} Some commenters go further, asking the Commission to adopt a market modification mechanism like that for cable, but offer no legal basis for such a mechanism.^{20/} BellSouth believes SHVIA gives the Commission no authority to conform any DTH market definition to the cable definition for that market, or to expand the satellite market definition required by SHVIA.

As explained by BellSouth in its comments, and by Paxson Communications Corporation in its comments,^{21/} SHVIA dictates the area of each market and gives the Commission no discretion to vary these areas.^{22/} Similarly, SHVIA dictates what stations are entitled to be

^{18/} For example, consumers will be confused and inconvenienced if a particular station is available on cable but not on satellite, or visa versa, due to staggered election cycles.

^{19/} NAB Comments, at 4-5; Comments of WDBJ Television, Inc., at 3; Comments of Mid-State Television, Inc., at 4; Comments of Christian Television Network, at 5; Comments of KNTV License, Inc., at 4.

^{20/} Comments of WDBJ Television, Inc., at 3; Comments of Mid-State Television, Inc., at 4; Comments of Christian Television Network, at 5; Comments of KNTV License, Inc., at 4.

^{21/} Comments of Paxson Communications Corporation, at 7-8.

^{22/} The market is the relevant DMA. The Commission may use the DMA definition of a market for 1999-2000 or later years, but must nonetheless conform to one of these DMA definitions.

carried in a market, subject only to limitations designed to avoid substantial duplication and to balance DTH carriage capacity concerns with the desire to see stations on DTH platforms. Thus, SHVIA does not give the Commission authority to implement such cable carriage requirements as distant signal carriage or to modify a market unless the modification would define the market identically to the Nielsen 1999-2000 DMA definition of the market or a definition of the market set forth in a later publication of DMA definitions.

Adding a station to a market when the DMA definition excludes it from the market would not only violate SHVIA, but would place DTH providers in the untenable position of being forced to carry copyrighted material for which the providers have no compulsory license. As explained by BellSouth in its comments,^{23/} Section 122(j) of the United States Copyright Act provides a compulsory license to DTH providers which extends only so far as the DMA definition of the local market. This regime differs markedly from the cable must-carry and compulsory license regime, which gives the Commission greater discretion in defining the market and correspondingly expanding or contracting the scope of the compulsory license for the market.^{24/} Thus, whatever discretion the Commission may possess to vary the local market definition for DTH carriage, that discretion cannot be exercised in a manner that would force DTH providers to violate Federal copyright law in order to offer local-into-local service.

^{23/} BellSouth Comments, at 13.

^{24/} See BellSouth Comments, at 10-11.

C. *Delivery of a Good Quality Signal to the Local Receive Facility.*

(1) *A Station's Right to Carriage Is Predicated on Its Delivery of a Good Quality Signal.*

ALTV, NAB and Network Affiliates offer virtually identical arguments that a DTH provider must carry a station even if the station does not satisfy its duty to deliver a good quality signal to the DTH provider's receive facility.^{25/}

This proposition conflicts with the express language of Section 338 and rational public policy, and would beget an absurd result. If an inferior TV station signal is delivered to the local receive facility, it will be impossible to bring it up to the technical quality of other signals. Why would Congress have enacted a good quality signal delivery requirement if Congress did not want to ensure that the American public receives good quality signals? In short, these TV station interests would have the Commission rule that the American public should receive poor quality DTH signals. This would diminish DTH in the eyes of the public and lead to an absurd result, and a statute should not be construed to obtain an absurd result.^{26/} In fact, this argument by the TV station interests simply cannot be squared with NAB's statement that "local ... stations should be delivered with at least as high technical quality as any other channel delivered by the satellite carrier."^{27/}

In an attempt to fit their theory to SHVIA's requirements, ALTV and NAB state that the DTH provider can incur the cost of carrying the signal to the local receive facility and then bill

^{25/} ALTV Comments, at 28-30; NAB Comments, at 5-9.; Network Affiliates Comments, at 11-12.

^{26/} *Horn v. C.I.R.*, 968 F.2d 1229, 1239 (D.C. Cir. 1992); *see also United States v. Garcia*, 182 F.3d 1165, 1172 (10th Cir. 1999).

^{27/} NAB Comments, at 19.

that cost to the TV station.^{28/} Indeed, that would be the practical result of adopting ALTV's and NAB's argument. But, it makes no sense to force a station to make a carriage election without the station knowing what the bill will be for those rights and without knowing whether the station can afford to pay for that carriage. Obversely, why should a DTH provider defray a station's costs without adequate assurances that the station will reimburse the DTH provider and pay the DTH provider reasonable interest on the amount of the loan?

Thus, it should come as no surprise that ALTV, NAB and Network Affiliates can point to no statutory language supporting their position. Rather, their argument rests on a tenuous theory as to how Congress arranged the provisions in SHVIA, and on speculation as to Congress's underlying intent. Thus, they read far more than can be reasonably read into the fact that the 1992 Cable Act places the good quality signal requirement for cable carriage in the definition of the term "television station," while SHVIA locates the good quality signal requirement for DTH apart from the section containing the carriage obligation.

The differences in the location of the good quality signal language in SHVIA and the 1992 Cable Act in no way supports the conclusion that the obligation is in any way diminished. The broadcasters' argument rests on the assumption that Congress prefers to express law in the form of clues rather than in direct statements of intent. Indeed, the television station interests' interpretation would be so essential to the operation of SHVIA that Congress would be expected to speak directly to the point, rather than go through the considerable effort to mask the point in a clever and purposeful ordering of statutory provisions. Further, the television station interests could only hope to support their interpretation if they could show that all other possible reasons

^{28/} ALTV Comments, at 29; NAB Comments, at 6.

behind the arrangement of the provisions in SHVIA are precluded. But they do not even attempt to make such a showing.

The fact is that drafters of statutes do not spend valuable time wondering if the order in which they express provisions can be used in some sinister fashion to modify the intent behind the language. For this very reason, private agreements commonly contain a clause stating that the ordering of provisions is for convenience of reference and is not to be used in interpreting the meaning of provisions. This logic extends to rules of statutory construction. Indeed, it violates tenets of statutory construction to compare what Congress said in one statute to determine what it meant in another statute,^{29/} even when actual language in one law is used to interpret actual language in another law. Indeed, the use of such ordering is completely inappropriate where, as here, the argument supported by the ordering of provisions would lead to an absurd result inconsistent with the plain language of the statute.^{30/}

ALTV and NAB attempt to further support their argument by speculating that Congress knew that DTH providers would try to avoid carriage obligations by “ginning up” excuses for classifying TV station signals as lacking in quality.^{31/} They fail to support this speculation with any express statutory language, discrete Congressional findings or specific legislative history.

(2) *Requiring an Adjudicated Determination of Inadequate Signal Quality Before a Station May be Denied Carriage Is Backward.*

NAB’s related request to require an adjudication before a DTH provider can refuse to carry a station similarly turns SHVIA on its head.^{32/} BellSouth finds no statutory or logical support for this suggestion. Section 338 sets forth a procedure for resorting to governmental

^{29/} *Bedroc Ltd. v. United States*, 50 F. Supp. 2d 1001, 1005 (D. Nev. 1999).

^{30/} *Horn, supra*, at 1239.

^{31/} ALTV Comments, at 29; NAB Comments, at 6-7.

^{32/} NAB Comments, at 9.

relief, and it does not include the interlocutory procedure NAB suggests. The Commission generally does not favor interlocutory appeals.^{33/} The responsibility under SHVIA to deliver a good quality signal is placed squarely on the TV station. Substituting a time-consuming and expensive administrative process for this responsibility is contrary to SHVIA and does not make sense. Indeed, the very presence of such a procedure will encourage signal quality dispute litigation before the Commission because stations will be able to use litigation in bad faith as a delaying tactic to require carriage of inferior signals while making changes in the delivery method.

(3) *Network Affiliates Provides No Valid Examples of Exceptions to the Statutory Requirement Imposed upon the Station to Bear the Costs of Delivering a Good Quality Signal to a Receive Site.*

Network Affiliates recognizes that Section 338(b)(1) requires the station to bear the cost of delivering its signal to the satellite carrier's designated local receive facility or non-local facility established with the consent of at least one-half of the must-carry stations in the DMA.^{34/} Yet, Network Affiliates asks the Commission to require DTH providers to place a local receive facility within 50 miles of each station's community of license or within each station's Grade B contour.^{35/} Network Affiliates also suggests that DTH providers should be required to bear the cost of sending station signals more than 50 miles to any regional receive point. BellSouth disagrees that Network Affiliates' proposed exceptions are available under SHVIA.

A requirement to place a local receive facility within a certain radius of all stations or within their Grade B contours is inconsistent with Section 338(h)(2), which defines the "local receive facility" as the "reception point in each local market which the satellite carrier designates

^{33/} See, e.g. Rule 1.106(a)(1).

^{34/} Network Affiliates Comments, at 8.

^{35/} Network Affiliates Comments, at 10.

....”^{36/} That language reserves the selection of the local receive facility location to the DTH provider. Indeed, Congress considered and rejected a proposal to limit this reservation of power.^{37/} Moreover, Network Affiliates suggested exceptions to this clear statutory directive could very well require DTH providers to establish numerous local receive facilities in a DMA. For example, there may not be one point where all station Grade B signals in a DMA intersect, or a point which is within 50 miles of the communities of license of all stations in a DMA. Even if such overlap areas exist, they may be in areas where zoning or other land use restrictions preclude the construction of local receive facilities. But, SHVIA only requires the DTH provider to establish one local receive facility. Nowhere in SHVIA does Congress refer to more than one local receive facility or regional receive facility for a DMA.

Indeed, Network Affiliates’ stated reason for suggesting these exceptions to SHVIA is to shift the cost burden from the stations to the DTH provider.^{38/} But, Congress already decided that policy issue by stating that the station has to bear the cost burden, with the following statutory language:

“A television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.”^{39/} (emphasis supplied)

The operative language is “shall be required to bear the costs.” This statutory language not only precludes the adoption of Network Affiliates’ exceptions for local receive facilities, it also

^{36/} Emphasis added.

^{37/} This point is discussed in Section II(C)(4), *infra*.

^{38/} Network Affiliates Comments, at 9.

^{39/} 47 U.S.C. § 338(b)(1).

precludes Network Affiliates' exception for regional receive facilities by stating in no uncertain terms that stations have to bear the cost burden of carriage to a regional receive facility.

(4) *Adjudications Cannot Be Used to Upset, or Delay the Effect of, the Statutorily Required Democratic Process of Voting by Stations for Non-Local Receive Facilities.*

NAB urges the Commission to establish a complaint process whereby stations voting against a successful vote for a non-local receive facility can protest if they believe the vote involved the designation of a non-local receive facility site that would undermine or evade the must-carry requirements.^{40/} BellSouth disagrees with this suggestion. Under Section 338(b)(1), the stations' vote decides the issue. There is no statutory basis for Commission action to review or reverse this process. Once the vote is counted there is nothing for the Commission to review. In fact, Congress considered and rejected language that would have prohibited a DTH provider from designating a receive site to "undermine or evade the carriage requirements"^{41/} Resurrecting that standard in rules, after Congress consciously rejected that standard, plainly would violate Congressional intent.

The process suggested by NAB can only serve to frustrate the simplicity and rapid resolution Congress sought through this democratic process. DTH providers will not be willing to go through the considerable expense and effort required to establish a non-local receive facility, even if one-half of the stations vote for it, if a station voting against it can cause the Commission to review, and possibly reverse, the process. Indeed, NAB has not suggested any s

^{40/} NAB Comments, at 12.

^{41/} That language appeared in H.R. 1027 as the last sentence to what was enacted as Section 338(h)(2), defining "local receive facility." H.R. Rep. No. 86, 106th Cong., 1st Sess., at 7 (April 12, 1999) (H.R. 1027).

tandard by which the non-complaining stations and the DTH provider will be able to even venture a guess as to whether the complaining station may prevail in its complaint before the Commission. NAB's suggestion of Commission intervention if the choice of the site "undermines or evades the must-carry requirements" is too murky a standard to guide stations and DTH providers in their selection of non-local receive facility sites. Launching local-into-local service in a DMA will be delayed considerably if the Commission adopts this suggestion. Finally, a station would be incented not to cooperate to establish non-local receive facilities because it will know that it can delay establishing those facilities simply by making a filing before the Commission, thus expanding the power of its single vote against the facility in violation of the statute's "one-station-one-vote" regime.

- (5) *There Is No Demonstrated Reason Why the Cable Definition and Case Law Related to a "Good Quality Signal" Should Not Be Used in the DTH Context or Why the DTH Provider's Burden Should Be Greater than the Cable Company's Burden.*

BellSouth's comments support use of the definition of "good quality" signal (-49dBm for VHF and -45dBm for UHF), and related testing procedures, to measure signal quality delivered to a cable headend by a local television station. Since those signal quality standards have been effective in the cable environment, there is no reason they will not work for satellite.^{42/}

NAB's comments suggest that the signal quality determination responsibilities of DTH providers should be greater than those imposed under Commission rules and policies on cable systems. Thus, NAB proposes adding "additional safeguards," such as permitting local stations to observe measurement procedures and requiring use of independent engineers to conduct tests.^{43/} However, NAB provides no support for imposing more stringent requirements on DTH

^{42/} BellSouth Comments, at 15-19.

^{43/} NAB Comments, at 14-15.

providers than on cable systems. Moreover, in an apparent effort to shift signal quality responsibility from television stations to DTH providers, NAB misconstrues Commission precedent establishing that television stations seeking cable carriage bear primary responsibility for delivering a good quality signal to the cable headend.

BellSouth acknowledges that DTH providers have a role in ensuring signal quality, but it is limited to cooperating with local stations in measuring the signal strength delivered by the station to the DTH provider's signal collection point.^{44/} Like cable systems, DTH providers should be required to cooperate in testing the signal quality delivered by television stations to the DTH provider's designated signal collection point. But, DTH providers should not be required to undertake any extraordinary measures, either in testing or in ensuring adequate signal quality is delivered by the station to the collection point. To be entitled to carriage, the television station, not the DTH provider, must bear full responsibility and incur all necessary costs for actually delivering a signal meeting adequate quality standards (e.g., -49dBm for VHF and -45dBm for UHF) to the DTH provider's local or out-of-market collection site. To standardize the measurement procedure for cable, the Communications Act specifies the location within the headend at which cable systems must take measurements of signal strength,^{45/} and the

^{44/} See Section II(C)(3), *supra*, concerning the station's duty to bear the costs of carriage to the DTH provider's receive facility.

^{45/} To determine whether an adequate signal level is delivered to a system's principal headend, Section 614(h)(1)(B)(iii) of the Communications Act requires that measurements be taken at the input terminals of a system's signal processing equipment. In this regard the Commission has expressed the view that such measurements should be taken at the input to the first piece of active processing equipment relevant to the signal at issue. *Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2990, n. 299 (1993).

Commission has required that cable systems provide stations with certain information when providing a station with notice of failure to deliver a good quality signal.^{46/} BellSouth agrees that similar requirements, but nothing more, should be applicable to DTH providers.

NAB argues that “[s]atellite carriers must use specialized equipment to receive local station’s signals and to evaluate their signal strength.”^{47/} The Commission should reject this argument. The Commission has made clear that “[t]he cooperation expected of a cable operator, however, is not required when the cable operator has to employ extraordinary measures to measure signal strength”^{48/} and that a “cable operator’s cooperation in cases requiring extraordinary measures . . . is discretionary, not mandatory.”^{49/}

[W]hile [the Station] relies heavily on the *Clarification Order*’s requirement that currently non-carried stations be measured to the extent possible using equipment currently used to receive similar signals, it should be noted that this same order specifies that ‘cable operators need not employ extraordinary measures or specialized equipment when making measurement for stations that are not currently carried.’ The use of separate reception and microwave transmission equipment would fall within this category of extraordinary measures. 20/

20/ *Family Stations, Inc. v. Sonic Cable Television* (“*Family Stations*”), 10 FCC Rcd 8233, 8234 (1995) and Opposition at 3. See also, *Paxson Salt Lake* at 9437, and *Clarification Order* at 4143.^{50/}

^{46/} The cable operator’s notification that a broadcast station is failing to deliver a good quality signal to the system’s principal headend must provide the broadcaster with a list of the equipment used to make the initial measurements. Additionally, the cable operator must include a detailed description of the reception and over-the-air signal processing equipment used, including sketches and a description of the methodology used by the cable operator for processing the signal at issue. This information must include the specific make and model numbers and age of all equipment. *Id.* at 2990-91.

^{47/} NAB Comments, at 13.

^{48/} *Paxson Salt Lake City License, Inc.*, 15 FCC Rcd 7361, 7365 (2000), citing, *Clarification Order*, 8 FCC Rcd at 4143.

^{49/} *Paxson Salt Lake City License, Inc.*, 15 FCC Rcd at 7365.

^{50/} *Id.* at 7363-64 (emphasis added).

Thus, consistent with the Commission's regulatory regime for cable, the Commission should not require DTH providers to use extraordinary measures or specialized equipment to receive signals except to the extent the station, at its own expense, provides the DTH provider with the "specialized equipment" necessary to test for or receive a good quality signal.^{51/}

Furthermore, in the cable context the Commission has recognized that the signal quality standards (−49dBm for VHF and −45 dBm for UHF) are not immutable, and that cable systems may deny carriage because of poor signal quality (e.g., signal-to-noise ratio) despite measurements meeting signal strength standards. "[T]here may be situations where the levels of undesired signals (noise), outside of the cable operator's control, that are received at the cable system's headend adversely affect the quality of a television station's signal. . . [and] . . . [t]he Commission, as a matter of course, will consider all relevant technical issues, including the signal-to-noise ratio."^{52/} DTH operators similarly must be permitted to demonstrate that factors such as signal-to-noise ratio may require that a carriage request be denied, even where measurements reflect compliance with signal strength standards.

In all events, the Commission must make clear, as it has in addressing signal quality issues under its cable rules, that it is the television station's obligation to bear the cost of delivering a good quality signal to the DTH provider's signal collection point.

Further, we generally agree with cable interests that it is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend. This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements, especially if the cable system's over-the-air reception

^{51/} In fact, in one of the cases cited by NAB, the signal carriage complaint was granted only because the television station offered to provide, at its own expense, specialized equipment to ensure receipt of a good quality signal at the system's headend. *Reading Broadcasting, Inc.*, 13 FCC Rcd 22587 (1998).

^{52/} *Broadcast Signal Carriage Issues*, 8 FCC Rcd at 2990.